

DECISION

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**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-213576

DATE: December 28, 1983

MATTER OF: Zytron

DIGEST:

1. Protest alleging improprieties in a solicitation is dismissed as untimely when filed after bid opening because GAO Bid Protest Procedures require filing prior to bid opening.
2. GAO does not review affirmative determination of responsibility except in limited circumstances.

Zytron, a company of the Dun & Bradstreet Corporation, protests any award under invitation for bids (IFB) No. 7PR-52484/G5/7SB issued by General Services Administration for a requirement contract for microfiche reproduction. Zytron argues that the IFB is defective and that the low bidder is incapable of meeting the specifications.

We dismiss the protest.

Our Bid Protest Procedures require that a protest alleging improprieties in an IFB which are apparent prior to bid opening be filed prior to bid opening. (4 C.F.R. § 21.2 (b)(1) (1983)). Since Zytron filed its protest against the IFB after bid opening, it is untimely and will not be considered on the merits. Cobarc Services Inc., B-211618, May 9, 1983, 83-1 CPD 492.

The protest against the ability of the low bidder to perform the contract constitutes a challenge to the contracting agency's affirmative determination of responsibility which our Office will not review absent a showing that the contracting officer acted fraudulently or in bad faith or that definitive responsibility criteria in the IFB have not been met. Bid Protest Procedures, (4 C.F.R. § 21.3(g)(4), added by 48 Fed. Reg. 1932 (1983); K.P.B. Industrial Products, Inc., B-210445, May 24, 1983, 83-1 CPD 561. Zytron does not allege that either exception is present and, accordingly, this aspect of Zytron's protest is dismissed also.

Harry R. Van Cleve
Harry R. Van Cleve
Acting General Counsel

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